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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Alexander Josef

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EXAMINER

BROWN, COURTNEY A

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

01/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,985	Applicant(s) JOSEF, ALEXANDER	
	Examiner COURTNEY BROWN	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-10,12-19,21,23,24,26 and 28-40 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-10,12-19,21,23,24,26 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/23/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Receipt of Amendments/Remarks filed on December 23, 2008 is acknowledged. Claims 1, 2, 4-6, 8-10, 12-19, 21, 23, 24, 26, 28-40 are pending. Claims 3, 7, 11, 20, 22, 25, and 27 stand cancelled. Claims 1 and 40 were amended. Claims 28-39 are withdrawn as being directed to a non-elected invention. Claims 1, 2, 4-6, 8-10, 12-19, 21, 23, 24, 26, and 40 are being examined for patentability.

Information Disclosure Statement

The Information Disclosure Statements (IDS) submitted on September 23, 2008 has been considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1,2,4-6,8-10,12-19,21,23,24,26, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alyeshmerni (WO 00/76941 A1) in view of Dean et al., (US Patent 6,245,717 B1) and Freepons (US Patent 5,139,555).

Applicant's Invention

Applicant claims a solidified molten homogeneous mixture; the molten mixture containing phosphorous acid and at least one other NPK nutrient, metal microelements, and a base selected from potassium carbonate and potassium hydroxide in an amount to at least partially neutralize said acid, at a temperature of from 60°C to 130°C; cooled and broken to water-soluble, granular, free-flowing agrochemical composition, not leaving harmful or useless deposits in the soil, of uniform particle size containing from 0% to 1% water.

Determination of the scope and the content of the prior art (MPEP 2141.01)

Alyeshmerni teaches a solid or granular fertilizer formulation (page 9, lines 15-24, claims 1 and 27 of instant application) that comprises: a salt of phosphorous-containing acid (page 5, line 29-33 and page 12, reaction 2 for phosphite synthesis, line 5, claims 1 and 3 of instant application); other NPK nutrients such as monopotassium phosphite (page 7, lines 1--14, claims 1,2, and 14 of instant application); and microelement compounds such as copper, zinc, boron, magnesium, iron, calcium, sulfur, manganese, and molybdenum (page 15, lines 14-16 and Figure 3, claims 1 and 4-6 of instant application). Alyeshmerni also teaches a preferable pH of the formulation being 3.5-4.5 (page 13, lines 27-29) and how to achieve a desired pH for the formulation (page 19, lines 4-30, claims 19 and 26 of instant application).

***Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)***

The difference between the invention of the instant application and that of Alyeshmerni is that the instant invention requires that the NPK nutrient have a uniform particle size in the form of metal microelements (claim 6) and the use of additives and water. For this reason, Dean et al. is joined. Dean et al. teach a composition that may be in the form of a granule, diluted with water (column 4, lines 54-63) that may include one or more surfactants (column 4, lines 41-42, claims 8, 9, and 13 of instant application); humic acid (column 8, line 66, claims 8 and 13 of instant application); water (column 5, lines 8-31, claims 20 and 21 of instant application); micronutrients such as zinc, iron, copper, magnesium, boron, and molybdenum (column 6, lines 62-64 and claims 4 and 6 of instant application); and complexing agents (metal microelements of instant application) such as ferrous chloride (column 7, line 60-end to column 8, lines 1-24, claims 4 and 6 of instant application).

Another difference between the invention of the instant application and Alyeshmerni is that the instant application claims a solid, granular, free-flowing, water-soluble composition that is a solidified molten homogeneous mixture and does not leave harmful or useless deposits in the soil. For this reason, the teaching of Freepons is joined. Freepons teaches fertilizer granular products made from fine particles of a nitrogen source together with a binder that is compatible with soil wherein any residue of said binder is either inert, biodegradable, soil conditioning, or have plant nutrient

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value (column 7, line 54 bridging to column 55, lines 1 and 2). Freepons additionally teaches that the aforementioned granular fertilizer product is hardened from a molten state that enrobes particles (column 8, lines 19-26). It is the Examiner's position that if the aforementioned granular product is homogeneous if it is produced from a molten state.

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to combine the teachings of Alyeshmerni, Dean et. al., and Freepons. One would be motivated to combine these teachings because complexing agents such as humic acid and the metal microelements serve as a carbon skeleton agent and to solubilize other components which may precipitate and become assailable or may immobilize minerals in the soil (Dean et al., column 7, lines 60-end and column 8, lines 1-24). Water and surfactants are used to facilitate the application of the composition to the plant (Dean et al., column 5, and lines 13-25). Additionally, Freepons teaches the use of molten mixtures produces granular products that do not leave harmful or useless deposits in the soil. It would be prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually

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taught in prior art." In re Kerkhoven 206 USPQ 1069, 1073. Thus, combining Alyeshmerni with Dean et. al as claimed in the instant invention sets forth prima facie obvious subject matter. Alyeshmerni teaches a homogeneous formulation (page 8, lines 28-30) and according to Merriam-Webster's online dictionary, homogeneous means of uniform structure or composition throughout. Therefore, the limitation of claim 1 wherein the MPK nutrient is uniform in particle size is taught by Alyeshmerni. The examiner notes that Applicant claims a synergistic mixture of the additives and the metal microelements with the salts of phosphorous acid. The Examiner notes that the examples of the specification do not disclose data that shows the synergistic effects of the combination of the additives or the metal microelements with the salts of phosphorous acid. Therefore, the examiner cannot determine if the combination of the additives or the metal microelements would produce the purported synergism when combined with the salts of phosphorous acid. Therefore, the examiner notes that the claims are not commensurate in scope. In reference to the composition being completely dissolved when mixed with water at an ambient temperature in a ratio of 10 parts of solid to 90 parts of water or 20 parts of solid to 80 parts of water, those limitations are met when the formulation has a pH of 3.8-5.3. This pH range is taught by Alyeshmerni. Additionally, it is routine optimization for one of ordinary skill in the art to adjust the amount of ingredients to optimize the desired results. In this case the weight percent ranges of the salt of phosphorous acid, NPK nutrients, metal microelements, and water components are routine optimization.

Examiner's Response to Applicant's Remarks

Applicant's arguments with respect to the 35 USC 103 (a) rejection of claims 1, 2, 4-6, 8-10, 12-19, 21, 23, 24, 26, and 40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

None of the claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is

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571-273-8300.

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